IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6933 OF 2003

J.M.J. Developers Pvt. Ltd. ...Petitioner

Versus

Smt. Shantabai Tukaram Choudhary and others ...Respondents

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Mr. P.K. Dhakephalkar with Jagdish G. Aradwad, counsel for Petitioner

Mr.Ramesh S. Bhalerao, counsel for Respondent No.1.

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CORAM: B. H. MARLAPALLE, J.

DATED: 2ND MARCH, 2005

P. C.:-

1. Heard Mr. Dhakephalkar with Mr. Aradwad, the learned counsel for the petitioner and Mr. Bhalerao the learned counsel for the respondent No.1.

2. The petitioner is the defendant No.1 in Special Civil Suit No. 1371 of 1999 and in the said suit after plaintiff's evidence was closed on or about 11.8.2003, the petitioner filed an application at Exh.194 under Order XVI Rule 1 for witness summons. The said application was opposed by the plaintiff by filing her say and by the impugned order dated 11.9.2003, the said application has been rejected by the learned C.J.S.D. at Pune. This petition has

been presented on 26.9.2003 and on 30.9.2003 while issuing notice before admission, status-quo order was passed till 14.10.2003 and subsequently by an order dated 16.10.2003 further proceedings in Special Civil Suit came to be stayed.

3. It is required to be noted that pursuant to the order passed by this Court in Civil Revision Application No. 950 of 2001, the trial of Special Civil Suit No. 1371 of 1999 was made time bound. The learned Judge of the trial Court could not maintain the said time limit and therefore, first extension of four months was sought and granted by this Court. The second time limit also could not be maintained and therefore, the trial Court prayed for second extension, it was also granted for four months and the trial Court was warned that any further extension sought for would be noted seriously.

4. On the face of these orders passed by this Court, after the evidence of the plaintiff was closed on 11.8.2003 it appears that the petitioner firm filed an application at Exh.194 on or about 18.8.2003. Two prayers were made viz. witness summons to be issued to the Officer in charge of Yerwada Police station calling upon him to produce the entire file concerning the Regular Criminal case No. 373 of 2001 and to remain present in person for being examined.

In addition, the witness summons was also sought to be issued against the Branch Manager, Union Bank of India, Aga Khan Palace Branch, Pune to bring certified statement of accounts alongwith the original current account bearing No.20017 from 1.9.1997 to 30.10.1997.

5. It appears that the plaintiff had alleged that the cheque issued by the defendant No.1 in her favour was not honoured, though there was enough balance available in the account of the present petitioner, on account of the instructions given by him to stop the payment and she thus alleged that the petitioner firm had failed to fulfil its part of the contract. The defendant No.1 on the other hand had alleged that it was the plaintiff who did not fulfil her part of the contract. The defendant No.1 had filed additional written statement some times in the year 2002 and even in the said additional written statement there was no mention about the file having been with the police station at Yerwada.

6. It was under these circumstances, that the trial court considered the provisions of Order XVI Rule 1 and held that though the defendant No.1 had knowledge about the requirements of these additional witnesses he did not file the list of witnesses alongwith the original written statement or additional written

statement and the application was presented after the plaintiff had closed her evidence. It therefore, held that the application could not be entertained. The view taken by the trial Court cannot be held to be manifestly erroneous or perverse in the circumstances of this case and the court below has rightly refused to exercise its discretionary powers in favour of the defendant No.1. Hence, no interference is called for in the said order in this petition under Article 227 of the Constitution of India.

7. The petition is rejected summarily. Ad interim order stands vacated.